REMARKS

Applicant respectfully requests the foregoing claim amendments prior to examination of the present application.

Status of the claims

Claims 1-84, 90, 97, 106, and 114 are cancelled. Claims 1-84 were previously cancelled. Claims 98, 124 and 125 are amended to correct a minor typographical error. No new matter is added. The foregoing amendments are made to advance prosecution and without disclaimer of subject matter removed by amendment.

Claims 118-125 and 128-139 are withdrawn. Applicant respectfully requests rejoinder and examination of the withdrawn claims upon identification of allowable subject matter in the elected claims.

Claims 85-89, 91-96, 98-105, 107-113, 115-117, 126, 127, 140, and 141 are under examination.

Response to Restriction Requirement

In response to the restriction requirement set forth in the Office Action mailed January 15, 2011, Applicant hereby provisionally elects Group I, drawn to a human antibody or antigen binding fragment that binds to CD38. Claims 85-89, 91-96, 98-105, 107-113, 115-117, 126, 127, 140, and 141 read on the elected Group. No election of species is required, as confirmed by a telephone call to the Examiner on February 1, 2011.

This election is made *with* traverse.

The claims are restricted under the Unity of Invention standard on the basis that their special technical feature is allegedly disclosed by Logtenberg, et al. (WO 2002/06347 published January 24,2002). Applicant respectfully disagrees. Logtenberg et al. is directed to an scFv, UM16, specific for CD38. This does not destroy the special technical feature linking the claims as scFv's have no Fc portion, therefore, they cannot provide for ADCC or CDC. The independent product claims, 85 and 93, are directed to an antibody with ADCC or CDC activity. In addition, claim 100 is directed to an antibody specific for an epitope of CD38 from amino acid residues 1-215, and the antibody of Logtenberg, UM16, binds to a

different epitope. The Logtenberg specification states, "In antibody binding inhibition assays, binding of scFv UM16 to CD38 was almost completely blocked by the OKT10 and not by the IB4 monoclonal antibody. The epitope of the OKT10 antibody has been mapped to residues 280-298 at the carboxyl terminus of the 300 residue CD38 molecule..." The majority of the other claims (or groups of claims) recite uses of the antibodies of Group I. Accordingly, the antibody disclosed by Logtenberg does not destroy the unity of invention of the present claims, and the restriction requirement should be withdrawn.

At least Groups I, II, IV, V and VI should be rejoined. Group IV is directed to DNA encoding the antibodies of Group I. Groups II, V and VI are directed to methods of using or methods of making the antibodies of Group I.

Should the Examiner decline to withdraw the present restriction, Applicant respectfully requests that, upon allowance of the presently elected composition claims, the related method claims be rejoined and examined, according to MPEP § 806.

Examiner Gussow is invited to telephone the undersigned if it is believed that such communication would advance prosecution.

Respectfully submitted,

Date April 8, 2011 By /Elliott/

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The Commissioner is hereby authorized to charge any additional fees required under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Defects in providing full payment should likewise be charged to the Deposit Account. If any extensions of time are needed, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extension fees from the Deposit Account.